

OPINION NO. 70-135**Syllabus:**

1. A building attached to the land is real property for purposes of taxation under Section 5701.02, Revised Code, unless otherwise specified by law.

2. If the building on land is not owned by the owner of the parcel of land on which it is situated, the conveyance fee, as provided in Sections 319.202 and 319.54 (F) (i), Revised Code, shall not be charged unless the evidence of its title constitutes a perpetual lease in the land on which it is situated.

3. A single parcel of land may be split between two owners for tax purposes only when the fee of the soil is in one and the ownership of the minerals is in the other. There is no statute requiring or permitting the county auditor to list a building for tax purposes other than in the name of the holder of the title of the parcel of land on which it is situated.

To: Bernard V. Fultz, Meigs County Pros. Atty., Pomeroy, Ohio
By: Paul W. Brown, Attorney General, September 25, 1970

Your request for my opinion poses three questions as follows:

"1. Is a building owned by a party other than the owner of the land, real property within the definition of Section 5701.02 of the Ohio Revised Code, or is it property which is 'otherwise specified' where by agreement the building does not become a part of the land?

"2. If the building is real property, is the Auditor required to collect the conveyance fee as provided in Section 319.202 of the Ohio Revised Code?

"3. If a building which is owned separately from the land is real property, is the Auditor required to keep the building as a separate item in his records or should the building be combined with the land in the tax records?"

The phrase "otherwise specified" in your first question and as it is used in Section 5701.02, Revised Code, appears in Branch 3 of the Syllabus of Reed vs. Board of Education, 152 Ohio St. 207 (1949), as follows:

"3. Even if a structure or building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of 'real property' as that term is defined in Section 5322, General Code, unless the General Assembly has otherwise specified."

Some items on land are otherwise specified in Section 5713.04, Revised Code, and are not taxable. In pertinent part it is as follows:

"Each separate parcel of real property shall be valued at its taxable value, excluding the value of the crops, deciduous and evergreen trees, plants, and shrubs growing thereon. * * *

* * * * *

"The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway at the time of such assessment."

It is not, as you infer, that the owners of the land and buildings may otherwise specify their taxable status.

Section 5701.02, supra, formerly Section 5322, General Code, was interpreted with respect to the definition of real property for taxation purposes in Branch Four of the Syllabus of the Reed case, supra, as follows:

"4. A cottage, erected on land leased from the state and situated on the banks of Buckeye Lake, is a structure or building located on land and is, therefore, real property within the definition of that term in Section 5322, General Code."

"Permanent fixtures, structures or improvements upon land are to be taxed as real estate." Parkwood Golf Corp. vs. Donahue, 6 Ohio St. (2d) 198 (1966). Furthermore, all parcels of real property must be taxed in the name of the record titleholder. Split listing for tax purposes of a single parcel of land is permitted only when the surface and the minerals are owned separately, as stated in Section 5713.04, supra, as follows:

"If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests."

The General Assembly has made no other provisions for the listing of separate interests in a single parcel of real property. I am not apprised of the type of contract to which you are referring to evidence ownership in a building by a person other than the owner of the land upon which it is erected. According to Black's Law Dictionary, it must be a form of lease. A lease is defined as:

"[A]ny agreement which gives rise to relationship of landlord and tenant; any grant of permissive use; contract for exclusive possession of lands or tenements for determinate period; conveyance, grant or devise of realty for designated period with reversion to grantor; conveyance, usually in consideration of rent or other recompense, for life, years, or at will, grant of use and possession, in consideration of something to be rendered, instrument granting exclusive possession or control of premises, or portion, though use be restricted by reservations."

Section 319.54 (F), (3), and (i), Revised Code, read as follows:

"(F) The county auditor shall charge and receive fees as follows:

"(3) * * * [N]o fee shall be charged when the transfer is made;

"(i) By lease, whether or not it extends to mineral or mineral rights, unless the lease is for a term of years renewable forever;

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Apparently the legislature did not contemplate any application of the transfer tax unless the interest conveyed constitutes real property.

Reversing its original position that a permanent leasehold was a chattel, the Supreme Court of Ohio in 1842 declared that a

leasehold estate renewable forever in real property by the following statement in the case of David Loring v. John Melendy, E. W. Chester, Edward D. Mansfield, Arthur Elliott, et al., 11 Ohio Reports, 355 (1842). The second syllabus reads:

"A permanent leasehold estate is not a chattel, but is realty, subject to all the laws and rules which attach to land."

It has been customary in Ohio for many years to convey permanent leasehold estates by warranty deed.

I must conclude that the building is real property, but unless its ownership is evidenced by an instrument constituting a perpetual leasehold estate, the conveyance fee under Section 319.202, Revised Code, does not apply, and there being no provision in law for separate taxable interests in surface rights to land, the county auditor is not authorized to list the land and improvements separately.

It is therefore my opinion and you are accordingly advised that:

1. A building attached to the land is real property for purposes of taxation under Section 5701.02, Revised Code, unless otherwise specified by law.
2. If the building on land is not owned by the owner of the parcel of land on which it is situated, the conveyance fee, as provided in Sections 319.202 and 319.54 (F) (i), Revised Code, shall not be charged unless the evidence of its title constitutes a perpetual lease in the land on which it is situated.
3. A single parcel of land may be split between two owners for tax purposes only when the fee of the soil is in one and the ownership of the minerals is in the other. There is no statute requiring or permitting the county auditor to list a building for tax purposes other than in the name of the holder of the title of the parcel of land on which it is situated.